

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Adrian Gabriel
Supported by: Ms Kathy Armstrong

RESPONDENT: St Peter Port Services Ltd
Represented by: Ms Lorraine Jay

Decision of the Tribunal Hearing held on 3 March 2008

Tribunal Members: Mr Peter Woodward
Ms Georgie Scott
Ms Caroline Latham

UNANIMOUS DECISION

- 1) Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, Mr Adrian Gabriel was unfairly dismissed
- 2) The Tribunal also found that, under the provisions of The Employment Protection (Guernsey) Law, 1998 as amended, the Respondent failed to provide the Applicant with an adequate response to his request for a written statement giving particulars of the reasons for his dismissal.

Amount of Award (if applicable): 1) £10,100.01 and 2) £1,683.34

Total Award: £11,783.35

Mr Peter Woodward
.....
Signature of Chairman

26 March 2008
.....
Date

NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

Witnesses

For the Applicant: Mr Adrian Gabriel

For the Respondent: Ms Lorraine Jay
Mr Graham Reynolds (Operations Manager)
Mr Bruno Kay-Mouat (Managing Director)
Mr Paul Aldridge (Transport Manager)

Extended Reasons

1.0 Introduction

- 1.1 The Applicant, who was supported by Ms Kathy Armstrong, gave witness testimony under oath, which was also supported by documentary evidence. (EE1 Refers).
- 1.2 The Respondent represented themselves in the person of Ms Lorraine Jay Group General Manager for Alderney Shipping of which St Peter Port Services Limited is a part.
- 1.3 Mr Bruno Kay-Mouat, Mr Graham Reynolds and Mr Paul Aldridge gave witness testimony under oath, and were also supported by documentary evidence (ER1-4 Refers).
- 1.4 At the outset of the hearing the parties confirmed that:
 - 1.4.1 It was agreed that the effective date of termination was the 1 October 2007.
 - 1.4.2 The salary figures as detailed in the Applicant's ET1 were agreed by the Respondent.
 - 1.4.3 It was disputed by the Respondent that the Applicant had been Unfairly Dismissed as alleged in his ET1.
 - 1.4.4 There was a dispute between the parties as to whether Mr Gabriel had formally requested written reasons for his dismissal after the 1 October 2007.

2.0 Facts Found

- 2.1 Mr Gabriel commenced his employment with the respondent on the 7 January 2006 as the Warehouse and Distribution Manager.
- 2.2 Mr Gabriel's employment was terminated with immediate effect on the 1 October 2007 when he was in receipt of termination payments amounting to £9,487.81.

3.0 The Law

- 3.1 Mr Gabriel claimed that he had been unfairly dismissed within the meaning of Section 5(2)(a) of the Employment Protection (Guernsey) Law, 1998, as amended;

i.e.:- “the contract under which he is employed is terminated by the employer, whether it is so terminated by notice or without notice” and under the provisions of Section 6 of the Law, relating to fairness of dismissal.

- 3.2 Mr Gabriel claimed that he had not been provided with a “written statement of reasons for dismissal” as provided for in Section 2 of the Law although he had complied with the Law, by formally requesting this in writing to the Respondent.

4.0 Testimony from Ms Lorraine Jay

- 4.1 Ms Jay described the operation of St Peter Port Services Ltd, which in summary, consists of freight forwarding of either large containers, or breaking down of container loads into individual deliveries for clients throughout Guernsey. Ms Jay stated that among their major clients were the UK based company D.S.V. and Guernsey Post.
- 4.2 Ms Jay testified that the business had been considerably enlarged in 2005 with the purchase of Guernsey Freight Services and in consequence had taken over some long standing relationships and defined procedures. This growth in the business and the need to establish if current procedures would be fit for purpose for the future operation of St Peter Port Services led to a decision to create a new role, namely a warehouse and distribution manager. Mr Gabriel was appointed to this role in January 2006. In this role Mr Gabriel was responsible for the day to day running of the warehouse and circa 15 staff holding a variety of roles as drivers, store men and administrators. Apparently the workload could fluctuate on any given day and could be as many as 10 trailers per day or as few as 5; indeed on a “bad weather day” there might be zero arrivals from the UK.
- 4.3 At the outset of his employment Mr Gabriel was not given a job description however he was held responsible for the efficient use of resources, space and equipment. By the very nature of the business the paperwork was intensive in volume and complex in nature. It was described as an environment of tight dead lines with a significant requirement for Mr Gabriel to plan and schedule on a daily/weekly basis the incoming consignments and the outgoing dispatches.
- 4.4 Ms Jay confirmed that the company had not communicated any disciplinary procedures to Mr Gabriel other than those contained within his contract of employment; a contract which had not been signed by Mr Gabriel despite Ms Jay’s written request for him to do so. (ER1 Page 82 Refers).
- 4.5 Over a period of time, leading into 2007 a number of issues began to arise in relation to the efficient and safe working of the warehouse, for example Mr Gabriel did not prevent employees from smoking nor enforced any disciplinary actions in relation to this, (ER1 Page 80 Refers); also the failure to enforce the wearing of high visibility clothing by certain members of staff. Ms Jay stated that the warehouse was untidy and Mr Gabriel was not keeping track of the daily whereabouts of his drivers; but of far more concern were the numerous client complaints and concerns over delayed shipments, missed shipments and damaged goods.
- 4.6 By the middle of 2007, D.S.V. were so concerned by the level of complaints from their Guernsey clientele that they were threatening to give the work to a competitor company. Such was the concern within St Peter Port Services senior management team that Mr Kay-Mouat (The Managing Director) convened an impromptu meeting at the

warehouse with Mr Gabriel and the transport manager Mr Aldridge to communicate his deep concerns over the inefficient running of the warehouse.

- 4.7 Ms Jay testified that they were not sure if the issues were solely down to Mr Gabriel's lack of capability or concern to run the business efficiently or whether there were deep seated issues in the way they were asking the warehouse to be run. Given this concern it was decided to bring in an external consultancy company from the U.K. who had many years experience of advising on the appropriate logistics and processes for running an efficient warehouse.
- 4.8 In the period July through September 2007 the complaints from D.S.V. continued and this company warned of the imminent withdrawal of its business from St Peter Port Services Limited. In consequence, Ms Jay had many discussions with Mr Gabriel alerting him to her concerns and asking him to rectify the many problems which were evident on a day-to-day basis. These included: rising claims for damaged goods, increasing notification of lost goods, and the total failure of Mr Gabriel to resolve these issues or implement any improvements. Worse still, backlogs were building up in the warehouse and the requirement to clear loads on the same day basis was not being observed.
- 4.9 Ms Jay testified that whenever she asked for improvement suggestions from Mr Gabriel these were either not forthcoming or were totally inadequate, as evidenced by ER1 Page 76. Mr Gabriel continually blamed the lack of sufficient staff and insufficient floor space in the warehouse, and the few attempts by Mr Gabriel to implement improvements, e.g. rosters for the drivers, were implemented but then allowed to lapse within a few days or weeks.
- 4.10 In response to questioning from the Tribunal Ms Jay conceded that at no time did she communicate to Mr Gabriel that his employment was in jeopardy. Neither were any of her concerns communicated in writing as part of a disciplinary process. Ms Jay stated that she did not expect to have to tell anybody of Mr Gabriel's seniority that his job was in jeopardy.
- 4.11 Ms Jay also confirmed that Mr Gabriel was not subject to any form of appraisal process, nor any regular review of his work performance.
- 4.12 Towards the end of September the situation continued to deteriorate, the vital record of Proof of Deliveries now backlogged to some nine pages of unrecorded proofs versus an expectation that this would not normally extend to one or two pages.
- 4.13 On the 25 September 2007 a draft report was received from the external consultants, which described many inefficiencies of the running of the warehouse, which in the opinion of the consultants were down to the lack of management control of Mr Gabriel. In response to questions from the Tribunal Ms Jay confirmed that the final version of this report was not received until after the dismissal of Mr Gabriel and that until this Tribunal Mr Gabriel had not had sight of it.
- 4.14 Ms Jay stated that staff morale was at an all time low and that the company was experiencing very high levels of turnover at the warehouse. In response to further questioning on this issue Ms Jay stated that approximately 50% of the warehouse staff left in the period that Mr Gabriel was in charge and that this level of turnover was considerably higher than in any previous period.

- 4.15 D.S.V. were made privy to the findings of the consultants report but this apparently only hardened their resolve to withdraw their business worth some £400,000 per annum to St Peter Port Services. Consequently at the board meeting on the 29 September 2007 a decision was made to terminate Mr Gabriel's employment with immediate effect. (Document ER2 Refers).
- 4.16 The following Monday, 1 October, Ms Jay arrived at the warehouse in the company of the Operations Manager, Mr Reynolds. She testified that she had not briefed Mr Reynolds as she stated that she did not want to prejudice him as a witness. Neither had she scheduled this meeting with Mr Gabriel. In the event, she met Mr Gabriel in the warehouse and in front of Mr Aldridge requested Mr Gabriel to accompany her to an office contained in the warehouse. Ms Jay informed Mr Gabriel that this was a full disciplinary meeting; he was told that he could have an independent witness, in the event Mr Gabriel confirmed that he would be content that Mr Reynolds should stay as that independent witness.
- 4.17 Ms Jay confirmed that the company had no confidence in Mr Gabriel and that they wished him to leave the company immediately. He was given two options:-
- Option 1) Gave Mr Gabriel the choice to resign his position with immediate effect and accept a cheque for one month's salary, less one month's deductions and the equivalent of two months salary as "a gift" together with an employer's reference.
- In order for Mr Gabriel to accept this option he would be required to read and sign as understood an agreement indemnifying the company of any further liability against any claims.
- Option 2) Gave Mr Gabriel the choice to terminate the employment where he would be given a salary cheque for the minimum amount that would be legally required. The reason for terminating his employment would be for "Gross Misconduct" which would be fully detailed in the letter.
- 4.18 Mr Gabriel read the agreement and signed the agreement; electing for "Option One".
- 4.19 Ms Jay testified that at no time did Mr Gabriel disagree with the reasons put forward by Ms Jay and following the meeting he promptly cleared his desk, handed over his keys and left the building.
- 4.20 In response to questions from the Tribunal Ms Jay gave the following responses:
- (a) She defined Gross Misconduct in this instance as causing detrimental effect to the company through his personal conduct and thereby causing a breakdown of trust. Ms Jay conceded that at the time the company had no written definitions of Gross Misconduct.
 - (b) There was no disciplinary procedure in place.
 - (c) That she did not take any legal advice prior to the meeting with Mr Gabriel on the 1 October 2007.
 - (d) She did not contact the Commerce and Employment Advisory Service on or before 1 October 2007.

- (e) She informed the tribunal that she was a trained lawyer but that her knowledge of employment law was limited to viewing a website.
 - (f) That, at the time, she did not understand the conciliation process and how to achieve a binding agreement thus avoiding an appearance at the Tribunal; nor did she understand the provisions of the 2005 amendments to the Employment Protection (Guernsey) Law, which provide for a Compromise Agreement, which again would be binding on both parties but is subject to a strict procedure to take effect.
- 4.21 The significant points arising from cross examination included the fact that there was no performance management system in place at the time of the dismissal. That a job description had not been provided nor formal expectations set; the Applicant had been informed that as he was in a new role it was his responsibility to mould and create it.
- 4.22 Recalled to the stand later in the proceedings Ms Jay stated that the job description submitted to the Tribunal describing the duties of the warehouse and Distribution Manager had been developed after Mr Gabriel had left the company's employment.

5.0 Testimony from Mr Bruno Kay-Mouat (Managing Director)

- 5.1 Mr Kay-Mouat referred the Tribunal to ER1 Pages 75 / 75A which recorded the key points discussed between him, the Applicant and Mr Aldridge on the 9 July 2007. He highlighted in this meetings many shortcomings including a very untidy workplace, rubbish not cleared away and Trailers not being cleared promptly. He also drew attention to major backlogs in the paperwork and insisted that there must be a radical improvement in the way the Warehouse was being run. Other issues were discussed such as the lack of rosters / schedule for the drivers contributing to an overall lack of efficiency.
- 5.2 In response to this critique, Mr Gabriel asserted that he was understaffed and needed more administrative help. Mr Kay-Mouat stated he listened to these concerns and whilst he was not sympathetic to the idea of increasing staff numbers he did encourage Mr Gabriel to come up with ideas and an "improvement plan" which senior management could review and decide where support could be given. In the event Mr Gabriel produced a list of ideas (ER1 76 refers) which in his opinion were totally inadequate to address the problems being encountered.
- 5.3 Mr Kay-Mouat testified that the request for Consultancy help from the UK was almost an act of desperation; he and his senior managers could not be sure of the real issues that were creating all the difficulties and gave Mr Gabriel the benefit of the doubt.
- 5.4 Mr Kay-Mouat drew the attention of the Tribunal to a "Friends Reunited" web page which had been circulating throughout the workforce. This page had been published by Mr Gabriel and clearly indicated his wish to obtain new employment. Mr Kay-Mouat thought this had an unnerving effect on the workforce and further reduced staff morale which was already low.
- 5.5 Mr Kay-Mouat conceded that he personally was "not good with paperwork" and that whilst the memo to Mr Gabriel of the 9 July 2007 did list many issues of concern at no time did he put in writing that the continuing employment of Mr Gabriel might be at stake. He did think however that he had made it abundantly clear to Mr Gabriel and to Mr Aldridge that their jobs were "on the line" if improvements were not effected.

- 5.6 Under cross examination by Mr Gabriel the witness testified that he had in fact awarded increase in pay to Mr Gabriel that was slightly above the RPI percentage in January 2007, but this was in line with how all other staff had been treated and should not be considered as some special award.
- 5.7 Mr Kay-Mouat conceded that he had not written down any performance indicators or job expectations for Mr Gabriel but asserted he had given clear verbal direction as to what was expected.
- 5.8 In response to questions from the Tribunal Mr Kay-Mouat stated that the company encourages employee development, and the taking of external educational courses, but that he could not remember Mr Gabriel undertaking any such training.
- 5.9 Mr Kay-Mouat referred to the Board meeting of the 29 September and agreed it was at that meeting the Board had decided to dismiss Mr Gabriel but the manner in which this process was to be handled was left to Ms Jay.
- 5.10 The witness stated that to his knowledge neither a conciliated settlement nor a Compromise Agreement had been considered as part of the dismissal process.
- 5.11 Mr Kay-Mouat stated he had given some thought as to employment law as evidenced by his verbal warnings to Mr Gabriel in the months preceding his dismissal.
- 5.12 Mr Kay-Mouat thought that his contact with Mr Gabriel was fairly high with informal contact possibly twice a week; however, formal contact was rare.
- 5.13 Mr Kay-Mouat believed that Mr Gabriel had reasonable access to company performance and financial figures and at a sufficient level for him to propose real cost savings in a proper context; although Mr Kay-Mouat conceded there was no written “business plan” for the company.

6.0 Testimony from Mr Paul Aldridge (Transport Manager)

- 6.1 Mr Aldridge recalled the meeting of 9 July 2007 with Mr Kay-Mouat and Mr Gabriel; he was in no doubt that he and Mr Gabriel had been advised that their jobs were on the line if improvements were not made. When pressed on this issue later in his testimony he observed that he did not regard the meeting as a disciplinary meeting but in his words “it was pretty clear that their jobs were on the line”.
- 6.2 Mr Aldridge thought that some improvements had been implemented after this meeting by Mr Gabriel but were not sufficient in scope.
- 6.3 In response to questions from the Tribunal Mr Aldridge stated that he did have a personal job description but no personal objectives, neither did he know how his job performance was measured. He thought the Warehouse had been reasonably staffed in 2007 to meet all requirements and believed himself to be reasonably briefed by Ms Jay on company performance.

7.0 Testimony from Mr Graham Reynolds (Operations Manager)

- 7.1 Mr Reynolds confirmed that he had attended the meeting held between Ms Jay and Mr Gabriel on the 1 October and confirmed the testimony of Ms Jay as to the conduct of

the meeting including the offer to Mr Gabriel of two dismissal options. Mr Reynolds also confirmed that Mr Gabriel had agreed to his presence as a witness.

- 7.2 Mr Reynolds stated he had not been forewarned of the intent of the meeting on 1 October 2007, as it was thought this stance would enhance his standing as an independent witness.
- 7.3 Mr Reynolds stated that he had taken over responsibility for the warehouse immediately after the departure of Mr Gabriel and described the situation as chaotic. In particular there was an unacceptable amount of outstanding “PODs” (Proofs of Delivery) and DSV had given up ringing in with their complaints in apparent despair. Mr Reynolds stated that he sensed a wave of relief from the staff following the departure of Mr Gabriel.
- 7.4 Mr Reynolds had no doubts that the Applicant was aware of the serious issues relating to DSV.
- 7.5 In response to questions from the Tribunal Mr Reynolds confirmed that Mr Gabriel had not been offered any appeal from the decision to dismiss. He also stated that he had, in the past, had occasion to give verbal warnings to employees but beyond this had no further experience of administering discipline.

8.0 Testimony from Mr Gabriel

- 8.1 Mr Gabriel commenced his testimony by dealing with a number of issues raised by the Respondent. He turned first to the issue of low morale and high staff turnover and stated that in his opinion this was far more to do with drivers being asked to work excessive hours and to a newly introduced company policy which imposed mandatory third party damages on the drivers of up to £750 for any one incident whilst driving company vehicles.
- 8.2 Mr Gabriel conceded that toward the end of his employment with the Respondent that the PODs had fallen into significant backlog; however this was attributable in great part to necessary absence by an administrator to care for her seriously ill husband.
- 8.3 Mr Gabriel claimed that he had not been fully briefed on the role of the UK consultants nor the plan to change working practices and he responded to their questions on an ad hoc basis. This was quite typical of his lack of involvement by more senior Managers and thought this had added to his growing disillusion with the role and his own personal low morale.
- 8.4 Mr Gabriel confirmed he had attended the meeting on the 9 July with Mr Kay-Mouat and Mr Aldridge and did realise that the company was experiencing difficulties with clients such as DSV; however at no time did Mr Gabriel consider this to have been a disciplinary meeting.
- 8.5 Mr Gabriel agreed that by posting his wish to move jobs on the “Friends Reunited Web Site” he had not exercised the best judgement although he did not perceive the meeting with Mr Kay-Mouat on the 18 September 2007, when the issue was raised by Mr Kay-Mouat, to be a disciplinary meeting; and indeed Mr Kay-Mouat screwed up the advert and threw it away as if drawing a line under this issue. In his judgement none of the meetings prior to the 1 October 2007 with more senior managers constituted any form

of fair disciplinary process. He stated that it did not “register” with him that his job was in jeopardy.

- 8.6 Responding to questions from the Tribunal Mr Gabriel confirmed that he had previous experience with both the Guernsey Post Office and Channel Express which was relevant to his role as Warehouse Manager. He thought himself to be competent and that his role was in a state of evolution, he thought a reasonable man in the street would have thought he was doing a reasonable job.
- 8.7 Mr Gabriel would not concede that the critique from third parties such as DSV indicated that he was not competent.
- 8.8 When questioned by the Tribunal as to what actions he took to reduce the POD backlog or improve low morale he replied that he could do little given the limitation on resources although he did talk to his staff in the hope they could rectify some of the issues.
- 8.9 Mr Gabriel stated that much of the critique from DSV and other clients was not justified as 99% of claims against the company for loss or damage to goods were ultimately unfounded.

9.0 Closing Statement Respondent

- 9.1 Ms Jay asserted that the Applicant had lost interest in his role over a period of time and had become negligent in the discharge of his duties.
- 9.2 Contrary to testimony from the Applicant he had been made abundantly aware of his poor performance.
- 9.3 Mr Gabriel was actively seeking a new role with another employer and his team had become aware of this via the internet, thus further reducing staff morale.
- 9.4 The strength of the critique and negative comments from clients could not be ignored and he had to be removed from his post. There was an overriding need to protect the business and safeguard the employment of their workforce.
- 9.5 Ms Jay conceded that they had not followed a correct disciplinary procedure and had learnt from these mistakes.
- 9.6 In arguing for a reduction to any award the Tribunal might be minded to award, Ms Jay stated that the subsequent loss of the DSV contract could be directly linked to the negligence of Mr Gabriel. He had significantly contributed towards his inevitable dismissal and he had already received a sum of some £9,487.81 in respect of his loss of employment with St Peter Port Services Ltd.

10.0 Closing Statement Applicant

- 10.1 Mr Gabriel reminded the Tribunal of a total lack of a fair and open disciplinary process toward him.
- 10.2 There was no evidence of fairness or reasonableness in the way that his dismissal had been handled.

- 10.3 The events of October 1 2007 illustrated a “catalogue of errors” including the lack of any thorough investigation, lack of prior notice of a disciplinary meeting and the consequential inability by himself to rebut the allegations made by his employers.
- 10.4 Mr Gabriel conceded that he now agreed that he should have been more “structured” in the conduct of his meetings whilst employed by the Respondent.
- 10.5 Mr Gabriel asserted that there should be no reduction of any potential award as he had performed his role to the best of his ability.

11.0 Application for award due to alleged non disclosure of written reasons for dismissal

- 11.1 Mr Gabriel drew the attention of the Tribunal to document EE1 5 which was a copy of a letter sent to the Respondent at their offices at White Rock dated the 23 November 2007, requesting a written statement from the Respondent as to the reasons for his termination of employment.
- 11.2 The Respondent agreed that the address listed on this document was an appropriate one however they had no knowledge of the receipt of the letter.
- 11.3 Mr Gabriel was adamant that it had been sent, however he agreed that he had not communicated with the Respondent when no reply was received.
- 11.4 The Respondent described their system of handling incoming mail which left little room for a letter to have been mishandled or lost. The Respondent also stated that it was not unknown for the Post Office to misdirect mail, and this might have been the case with the letter from the Applicant.

12.0 Conclusions

- 12.1 It would seem to the Tribunal that from the outset of his employment in January 2006, Mr Gabriel was not given any clear expectations of his job requirements. Without a job description or a written list of duties and without any ongoing formal review of his performance in the role, the probability that he would not understand what was expected from him was very high. It would have been reasonable and good management practice, for his employer to have clearly indicated to Mr Gabriel the scope of his delegated duties and the standards to which they should be carried out.
- 12.2 The Respondent by its own admission told the Tribunal:
- (a) There was no disciplinary procedure in place.
 - (b) That they did not have a written definition as to what could be termed as gross misconduct.
 - (c) They did not contact the Commerce and Employment Advisory Service on or before 1 October 2007 to seek advice as to how this issue could be handled fairly and reasonably.
 - (d) Despite the fact that Ms Jay is a trained lawyer her knowledge of Guernsey employment law, which has been in force for over 8 years, was limited to viewing a website.

- (e) At no time did the Employer write to the Applicant prior to the 1 October 2007 indicating his job was in jeopardy if improvements were not made.
 - (f) The dismissal process adopted by the company on October 1 2007 was not subject to Board oversight nor was there provision for appeal by Mr Gabriel to a more senior member of staff or a Board Director.
- 12.3 The sum total of the above has persuaded the Tribunal that the company did not apply any disciplinary process that meets even the basic tenets of fairness and or reasonableness.
- 12.4 However the Tribunal does note that Mr Gabriel was appointed to this post with apparently relevant prior experience and does have some sympathy for the Respondent when they argue that the Applicant should have actively sought to import good management practices and seek better ways of managing a relatively volatile workload. From his testimony there seemed to be little attempt to do this. Mr Gabriel seemed to adopt either a passive or even fatalistic attitude toward the mounting problems blaming client complaints on an under-resourced team and dismissing many of these complaints in his testimony as groundless.
- 12.5 When challenged by senior management to develop written improvement recommendations Mr Gabriel produced a list of headline ideas without apparently any substantial plan of action; this again could be regarded as a fair and reasonable request by the Respondent of a relatively senior employee which apparently fell on stony ground.
- 12.6 The Tribunal has formed the opinion that this was more an issue of capability to perform the role rather than a wilful act of misconduct. Whether this was due to a lack of ability by the Applicant to transfer his past experience into this role or down to the lack of a formal performance management system by the Respondent; or indeed was a combination of both these factors, the end result was that Mr Gabriel's employment was terminated without an adequate disciplinary process.
- 12.7 It is worth noting, for future reference, that no conciliated settlement was reached, through the services of the Commerce and Employment Department's Conciliation team, nor did the letter signed by Mr Gabriel on 1 October 2007, waiving his rights, constitute a valid and legally binding Compromise Agreement; it did not meet the requirements of Section 30A of the Law, which lays out the conditions regulating such agreements. If the proper process had been followed, it is possible that the need for this Tribunal Hearing might have been averted.

13.0 Decision

- 13.1 Having considered all the evidence presented and the representations of both parties and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended that the Applicant was unfairly dismissed.
- 13.2 A reduced award of £10,100.01 is ordered. This award is reduced from the £20,200.02 claimed, this being equal to the Applicant's pay during his final six month's of employment with the Respondent. In reducing the award, as provided for by Section 23(2) of the Law, the Tribunal notes that it was persuaded by significant testimony

during the hearing that the Applicant was amply aware of mounting client complaints during his time in post and was in a role senior enough to take action to mitigate or eliminate many of the issues that had been raised, there is little evidence that he took such actions. The Respondent should, however, be aware that in still maintaining a substantial award for the Applicant, that the Tribunal is disappointed that a long established and locally managed company did not observe a fair and reasonable process in the dismissal of the Applicant.

- 13.3 A further award of £1,683.34 is ordered in respect of the non provision of written reasons for the dismissal of the Applicant after a formal request in writing had been submitted to the Respondent, this sum being calculated in accordance with Section 24(1)(b) of the Law. In making this award the Tribunal has come to the view that despite conflicting testimony, that on the balance of probabilities, a letter was posted by the Applicant on the 23 November 2007 and would have been received by the Respondent shortly afterwards.

Signature of the Chairman: Mr Peter Woodward

Date: 26 March 2008